

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
PESHAWAR.

JUDICIAL DEPARTMENT

J.Cr.A No.641-P of 2014.

JUDGMENT

Date of hearing.....24.10.2017.....

Appellant(s): (Tasir Ullah) By Mr. Waqas Ahmed Chamkani,
Advocate.

Respondent(s)/State: By Mian Arshad Jan, AAG.



QALANDAR ALI KHAN, J:- This Jail
Criminal Appeal by Tasir Ullah, appellant, is
directed against the judgment/order dated
31.05.2014 of the learned trial
Court/Additional Sessions Judge, Shabdaqar
(Charsdda), whereby, the appellant was
convicted under section 302 (b) PPC and
sentenced to rigorous imprisonment for life;
and also directed to pay compensation of

Rs:100000/-under section 544-A Cr.P.C to the legal heirs of the deceased, failing which, he shall further undergo six months SI, while extending him the benefit of section 382-B Cr.P.C. The appellant was, however, acquitted of the charge under section 324 PPC, vide the same impugned judgment/order dated 31.05.2014.

2. The case was registered in Police Station Battagram, Charsadda, vide FIR No.396 dated 28.08.2012 under sections 302/324 PPC on the report of Munir Khan, complainant, who had brought the dead body of his brother, Mehar Sayyab, to the Police Station with the help of his co-villagers and reported at 22:00 hours on 28.08.2012 to the effect that he and his brothers Mehar Sayyab, deceased, and Farhad Gul were proceeding towards *Sreekh Chowk* from their home and when reached the scene of occurrence, they noticed the presence of their cousin, Tasir Ullah son of Momin Khan, duly armed with pistol, and opened fire at them on their sight,

causing the death of his brother, Mehar Sayyab Gul, whereas they escaped unhurt. The motive for the occurrence was cited as quarrel earlier at evening time between the accused/appellant and sister of the complainant, Mst. Hina Bibi, married to Sameen brother of the accused/appellant. The occurrence was shown to have been witnessed by the complainant and his brother Farhad Gul. The complainant charged the accused/appellant for the *Qatl-i-amd* of his brother Mehar Sayyab and ineffectively attempting at his life as well as at the life of his brother Farhad Gul.

3. Following report of the complainant, the deceased, Mehar Sayyab, was referred to Battagram Hospital for autopsy, where the Medical Officer (PW-2) conducted Postmortem examination of the deceased and found the following firearm injuries;

“1. There was firearm entrance wound about 1/3 inches in diameter on left cheek.

2. There was firearm exit wound about 1/2 inches in diameter on the upper part of right side of the neck.
3. There was firearm entrance wound about 01 inch in diameter on the lower part of the thoracic spine with charring + tears present in clothing.
4. There was firearm exit wound about 1/2 inch in diameter about 02 inches below and one inch medial to right nipple, corresponding to wound No.3.
5. There was firearm entrance wound about 03 inches above and 03 inches lateral to wound No.3 on the back of left side of the chest and half inch in diameter.
6. There was firearm exit wound about 1/2 inch in diameter on the right side of the mid part of the sterna. Tears present and corresponding to wound No.5.
7. Laceration about 2 x 2 inches on the right side of the forehead, laceration about 1 ½ x 01 inch on the root of the

nose and laceration about 2 x 1 ½ inches in length and width respectively each present on right cheek.”

In the opinion of the Medical Officer, “the cause of death was injury to vital organ (liver, lung and heart) accompanied by and contributed to by injury to thoracic spine and spinal cord caused by firearm leading to shock, cardiopulmonary arrest and death”. The probable time between injury and death was shown in the PM report (EX.PW2/1) within 15 minutes; and between death and postmortem about 03 hours.

4. The investigation was entrusted to Ikramullah Khan S.I (PW-9), who proceeded to the spot, inspected the spot and prepared the site plan (EX.PB). During spot inspection, besides securing blood from the place assigned in the site plan to the deceased, Mehar Sayyab, the I.O also recovered four empty shells of 30 bore from the place assigned in the site plan to the accused/appellant and an energy saver bulb

25 Volts shown lit on the spot at the time of occurrence. The blood stained earth secured from the spot and blood stained garments of the deceased were dispatched to the FSL for opinion of the chemical examiner, who found the same as human blood and of the same group. Likewise, opinion of the Firearms Expert with regard to four 30 bore crime empties was that the crime empties were fired from one and the same 30 bore weapon. The accused/appellant, initially, remained at large, and was proceeded against under sections 204 and 87 Cr.P.C; but was, later, arrested on 14.03.2013; and a pointation memo was prepared by the I.O on 16.03.2013, without any recovery or discovery in consequence of the so-called pointation of the accused/appellant; who also refused to confess his guilt when produced before the Judicial Magistrate on the expiry of police custody for a couple of days. After completion of investigation, the local police submitted

complete challan against the accused/appellant to the learned trial Court.

5. The learned trial Court framed formal charge under sections 302 and 324 PPC, to which the accused/appellant pleaded not guilty and claimed trial.

6. In order to prove its case against the accused/appellant, the prosecution produced the following thirteen PWs, namely:-

- Ahmed Yar (PW-1), identifier of the dead body of deceased Mehar Sayyab before the police and Medical Officer in RHC, Battagram;
- Doctor Farman Ullah (PW-2), conducted PM examination of the deceased and furnished P.M report (EX.PW2/1);
- Silwar Khan ASI (PW-3), registered FIR (EX.PA) on the report of the complainant and also prepared injury sheet and inquest report (EX.PW3/1 and EX.PW3/2);

- Nihar Gul Moharrir/ASI (PW-4), is marginal witness to the recovery memo (EX.PW4/1), whereby, the I.O took into possession blood stained garments of the deceased;
- Fazal Subhan S.I (PW-5), conducted partial investigation in the case after arrest of the accused/appellant;
- Saeed Khan Inspector (PW-6), submitted complete challan in the case under section 512 Cr.P.C after completion of investigation, and also arrested the accused/appellant on 14.03.2013 and issued his card of arrest (EX.PW6/1);
- Mst. Hina Bibi (PW-7), sister of the deceased, Mehar Sayyab;
- Khan Sayyab (PW-8), is marginal witness to the recovery memos of blood stained earth, four empties of 30 bore

and one electric bulb energy saver 25 volts recovered from the spot by the I.O;

- Ikramullah Khan S.I (Rtd) (PW-9), conducted investigation in the case;
- Munir Khan (PW-10), is complainant in the case;
- Farhad Gul (PW-11), is the eyewitness;
- Amanullah DFC (Rtd) (PW-12), was entrusted with service of warrant of arrest under sections 204 Cr.P.C and proclamation 87 Cr.P.C; and
- Liaqat Ali Inspector (PW-13), also conducted partial investigation in the case;

7. After prosecution closed its evidence, statement of the accused/appellant was recorded under section 342 Cr.P.C, wherein, he refuted allegations of the prosecution levelled against him, but declined to be examined on oath or produce defence

evidence, followed by hearing of arguments of learned Deputy Public Prosecutor for the State assisted by learned counsel for the complainant and that of learned counsel for the accused; and, then, by the impugned judgment dated 31.05.2014, whereby, the accused/appellant was convicted under section 302 (b) PPC and sentenced to rigorous imprisonment for life, with direction to pay compensation of Rs:100000/- under section 544-A Cr.P.C to the legal heirs of the deceased, failing which, to further six months S.I; hence the instant Jail Criminal Appeal by the appellant against his conviction and the sentences awarded to him by the learned trial Court.

8. Arguments of learned counsel for the appellant, and learned AAG heard. Brother of the complainant was present, but he preferred to be represented by the learned AAG. Record perused.

9. In the report/FIR lodged in the Police Station by the complainant after 1 ½ hours of the occurrence, the accused/appellant was charged for firing at the deceased brother of the complainant, namely, Mehar Sayyab, in the presence of the complainant as well as his other brother, namely, Farhad Gul, while they were, reportedly, proceeding towards *Sreekh Chowk*; however, the purpose of proceeding towards *Sreekh Chowk* was not mentioned in the FIR; and, later on, explained by way of improvements in the statements of the PWs to the effect that the shops of the complainant, the eyewitness and the deceased were situated there; but the site plan does not show their shops situated anywhere either in the *Sreekh Chowk* or in that direction. The occurrence took place at 08:30 PM on 28.08.2012, but no source of light was mentioned in the FIR. However, improvements in the statements of the PWs were also made in this regard by showing an electric bulb (energy saver) lit on the wall of

the house of Yousaf Shah. The said Yousaf Shah was not examined as PW to lend credence to the assertions of PWs in this regard; and also strengthen version of the prosecution regarding occurrence taking place in the close proximity of the house and *hujra* of Yousaf Shah.

10. The FIR was lodged by the brother of the deceased and another brother of the deceased and the complainant, namely, Farhad Gul was cited as an eyewitness; but neither the complainant nor his other brother, Farhad Gul, received a single firearm injury despite the site plan showing them in the line of firing, which caused three firearms entry wounds besides a laceration to their deceased brother. On the other hand, motive for the occurrence was mentioned as quarrel between their sister married to brother of the accused/appellants, namely, Sameen, earlier at evening time; therefore, targeting one out of three brothers, and sparing two others to

become complainant and eyewitnesses in the case is something beyond comprehension. Even the motive could not withstand cross examination of the defence, as Mst. Hina Bibi, sister of the complainant, deceased and the eyewitness, categorically stated that the accused/appellant did not quarrel with her on the day of occurrence nor she had lodged the report regarding that, as it was a family matter. It may also be added here that Mst. Hina Bibi had not given any statement to the police in the case, according to her own admission in her statement in the Court; but she was, nevertheless, produced in the court as PW-7, and she narrated a different story of a quarrel taking place between her husband, Sameen, and the accused/appellant on account of the latter being jobless; and that her intervention in the quarrel caused her firearm injury on her right hand and thereafter the accused/appellant, allegedly, also fired at her brothers, resulting in the murder of her brother, Mehar Sayyab.

11. The FIR lodged in the police station was only signed by the complainant, Munir Khan, but the so-called eyewitness Farhad Gul also claimed to have reported the matter to the police and his signature obtained on that report, which is contrary to the factual position, as the FIR does not bear his signature even as a rider.

12. The blood stained earth collected from the spot was dispatched to the FSL for chemical analysis along with blood stained garments of the deceased, but were received in the FSL after about 13 days of the occurrence on 10.09.2012; and, likewise, the four empty shells collected from the spot by the I.O during spot inspection on 29.08.2012 were received for opinion of the Firearms Expert in the FSL, Peshawar, after considerable delay on 24.09.2012, making both the reports of chemical examiner and Firearms Expert hardly of any evidentiary value for the case of the prosecution.

13. In the FIR, only the appellant has been charged as the single accused for the *qatl-i-amd* of deceased Mehar Sayyab, and report of the Firearms Expert also shows all the four 30 bore crime empties fired from one and the same 30 bore weapon, besides the site plan showing the deceased and the accused/appellant facing each other; but the postmortem examination of the deceased creates serious doubts about the FIR, site plan and report of the Firearms Expert by showing three different dimensions of three entry wounds found on the dead body of the deceased i.e. firearm entry wound No.1 of the size and dimension of 1/3 inches on left cheek, firearm entry wound No.3 about 01 inch in diameter on the lower part of the thoracic spine with charring + tears present in clothing, signifying firing from close range, and firearm entry wound No.5 of the size and dimension of 03 inches above and 03 inches lateral to wound No.3 on the back of left side

of the chest and half inch in diameter. As such, the different sizes and dimensions of the three firearm entry wounds from different directions and presence of charring + tears on wound No.3 and 6 would not only suggest firing by more than one person but also negate the version of prosecution regarding commission of offence by only one person i.e. the appellant. The duration of 15 minutes shown between injury and death in the postmortem report would also raise question about instantaneous death of the deceased on the spot as alleged by the complainant.

14. Neither weapon of offence nor anything incriminating was recovered/discovered in consequence of the so-called pointation made by the accused/appellant, therefore, the pointation memo prepared by the I.O is of no value for the prosecution case. The appellant/accused also did not record confessional statement when produced by the police before the

Judicial Magistrate after expiry of two days custody.

15. There are, indeed, contradictions in the statements of the PWs, as Silwer Khan ASI (PW-3) stated that he first reduced report of the complainant in the shape of FIR and thereafter prepared injury sheet and inquest report of the deceased, without giving detail of injuries on the person of the deceased on the injury sheet; while, to the contrary, complainant Munir Khan (PW-10) stated in his statement before the Court that first the local police prepared the injury sheet etc and then reduced his report into writing.

16. In the wake of above stated scenario, the absconsion of the accused/appellant would be of no help to the case of prosecution, being not only a corroborative piece of evidence, but also not established in the light of statement of Amanullah (Rtd) DFC (PW-12), who failed to annex CNIC copies of the attesting witnesses, prepare sketch of

house of the accused and also houses of the attesting witnesses, who were neither Nazim nor Councilors of the locality.

17. In the face of so much discrepancies, contradictions and fatal improvements in the case of the prosecution, there was no justification for recording judgment/order of conviction and awarding punishment of imprisonment for life to the appellant. Besides, the appellant was acquitted of the charge of attempt at the life of the complainant and his brother and eyewitness Farhad Gul, under section 324 PPC vide the same impugned judgment dated 31.05.2014, obviously, by disbelieving their testimony, which, therefore, could not be relied upon for conviction of the appellant and award of sentences to him on the basis of such discredited evidence.

18. Consequently, the appeal is accepted, and while setting aside the impugned judgment dated 31.05.2014 as well as conviction and sentences awarded to the

appellant there-under, the appellant is acquitted of the charge of *qatl-i-amd* of the deceased; and he be set free, forthwith, if not required in any other case.

Announced.
24.10.2017.

J U D G E

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M.Iqbal

*(D.B) Hon'ble Mr. Justice Lal Jan Khattak.
Hon'ble Mr. Justice Qalandar Ali Khan.*